

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETEDGE, INC.,	}	
Plaintiff	}	
	}	
v.	}	Plaintiff's Answer to
	}	Defendant's Counterclaims
	}	
THE KYJEN COMPANY, INC.,	}	Civil Action No. 04 10807 MEL
Defendant.	}	
	}	

PLAINTIFF'S ANSWER TO THE DEFENDANT'S COUNTERCLAIMS

Plaintiff PetEdge, Inc. ("PetEdge") hereby responds to the Counterclaims of Defendant The Kyjen Company, Inc. ("Kyjen") as follows:

1. PetEdge denies any allegations of copyright infringement, trademark and trade dress infringement, and unfair competition as stated in paragraph 1 of the Counterclaims.
2. PetEdge admits that this Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1338, and 1367. PetEdge denies the remaining allegations of paragraph 2 of the Counterclaims.
3. PetEdge admits the allegations of paragraph 3 of the Counterclaims.
4. PetEdge admits the allegations of paragraph 4 of the Counterclaims.

5. PetEdge admits the allegations of paragraph 5 of the Counterclaims.

6. PetEdge admits that Kyjen sells toys and other pet accessories. PetEdge has insufficient information to admit or deny the remaining allegations of paragraph 6 of the Counterclaims and thus denies the same.

7. PetEdge admits the allegations of paragraph 7 of the Counterclaims.

FIRST CLAIM FOR RELIEF

8. PetEdge hereby restates and incorporates paragraphs 1-7 of the Answer to the Defendant's Counterclaims as if set forth fully herein.

9. PetEdge has insufficient information to admit or deny the allegations of paragraph 9 of the Counterclaims and thus denies the same.

10. PetEdge admits that Copyright Registration No. VA 999-576 is entitled "Coral the Crab Plush Toy" and lists The Kyjen Company, Inc. as the copyright claimant. PetEdge has insufficient information to admit or deny the remaining allegations of paragraph 10 of the Counterclaims and thus denies the same.

11. PetEdge has insufficient information to admit or deny the allegations of paragraph 11 of the Counterclaims and thus denies the same.

12. PetEdge has insufficient information to admit or deny the allegations of paragraph 12 of the Counterclaims and thus denies the same.

13. PetEdge admits that it sells a toy under the name "Zanies Floppy Crab". PetEdge denies the remaining allegations of paragraph 13 of the Counterclaims.

14. PetEdge denies the allegations of paragraph 14 of the Counterclaims.

15. PetEdge denies the allegations of paragraph 15 of the Counterclaims.

16. PetEdge denies the allegations of paragraph 16 of the Counterclaims.

SECOND CLAIM FOR RELIEF

17. PetEdge hereby restates and incorporates paragraphs 1-7 and 9 of the Answer to the Defendant's Counterclaims as if set forth fully herein.

18. PetEdge has insufficient information to admit or deny the allegations of paragraph 18 of the Counterclaims and thus denies the same.

19. PetEdge admits that Copyright Registration No. VA 1-015-297 is entitled "Gertrude the Goose" and lists The Kyjen Company, Inc. as the copyright claimant. PetEdge has insufficient information to admit or deny the remaining allegations of paragraph 19 of the Counterclaims and thus denies the same.

20. PetEdge has insufficient information to admit or deny the allegations of paragraph 20 of the Counterclaims and thus denies the same.

21. PetEdge has insufficient information to admit or deny the allegations of paragraph 21 of the Counterclaims and thus denies the same.

22. PetEdge admits that it sells a toy under the name "Zanies Berber Duck". PetEdge denies the remaining allegations of paragraph 22 of the Counterclaims.

23. PetEdge denies the allegations of paragraph 23 of the Counterclaims.

24. PetEdge denies the allegations of paragraph 24 of the Counterclaims.

25. PetEdge denies the allegations of paragraph 25 of the Counterclaims.

THIRD CLAIM FOR RELIEF

26. PetEdge hereby restates and incorporates paragraphs 1-7 and 9 of the Answer to the Defendant's Counterclaims as if set forth fully herein.

27. PetEdge has insufficient information to admit or deny the allegations of paragraph 27 of the Counterclaims and thus denies the same.

28. PetEdge admits that Copyright Registration No. VA 1-248-235 is entitled "Bungee Bone" and lists The Kyjen Company, Inc. as the copyright claimant. PetEdge has insufficient information to admit or deny the remaining allegations of paragraph 28 of the Counterclaims and thus denies the same.

29. PetEdge has insufficient information to admit or deny the allegations of paragraph 29 of the Counterclaims and thus denies the same.

30. PetEdge has insufficient information to admit or deny the allegations of paragraph 30 of the Counterclaims and thus denies the same.

31. PetEdge admits that it sells a toy under the name "Zanies Bungee Bone". PetEdge denies the remaining allegations of paragraph 31 of the Counterclaims.

32. PetEdge denies the allegations of paragraph 32 of the Counterclaims.

33. PetEdge denies the allegations of paragraph 33 of the Counterclaims.

34. PetEdge denies the allegations of paragraph 34 of the Counterclaims.

FOURTH CLAIM FOR RELIEF

35. PetEdge hereby restates and incorporates paragraphs 1-7 and 9 of the Answer to the Defendant's Counterclaims.

36. PetEdge has insufficient information to admit or deny the allegations of paragraph 36 of the Counterclaims and thus deny the same.

37. PetEdge admits that Copyright Registration No. VA 1-248-236 is entitled “Tug ‘N Ring Santa” and lists The Kyjen Company, Inc. as the copyright claimant. PetEdge has insufficient information to admit or deny the remaining allegations of paragraph 37 of the Counterclaims and thus denies the same.

38. PetEdge has insufficient information to admit or deny the allegations of paragraph 38 of the Counterclaims and thus denies the same.

39. PetEdge has insufficient information to admit or deny the allegations of paragraph 39 of the Counterclaims and thus denies the same.

40. PetEdge admits that it sells toys under the name “Zanies Holiday Ring Toys”. PetEdge denies the remaining allegations of paragraph 40 of the Counterclaims.

41. PetEdge denies the allegations of paragraph 41 of the Counterclaims.

42. PetEdge denies the allegations of paragraph 42 of the Counterclaims.

FIFTH CLAIM FOR RELIEF

43. PetEdge hereby restates and incorporates paragraphs 1-7 and 9 of the Answer to the Defendant’s Counterclaims as if set forth fully herein.

44. PetEdge has insufficient information to admit or deny the allegations of paragraph 44 of the Counterclaims and thus denies the same.

45. PetEdge denies the allegations of paragraph 45 of the Counterclaims.

46. PetEdge has insufficient information to admit or deny the allegations of paragraph 46 of the Counterclaims and thus denies the same.

47. PetEdge admits that it sells “Zanies Bungee Bone” toys and “Zanies Bungee Geckos” toys. PetEdge denies the remaining allegations of paragraph 47 of the Counterclaims.

48. PetEdge denies the allegations of paragraph 48 of the Counterclaims.

49. PetEdge denies the allegations of paragraph 49 of the Counterclaims.

50. PetEdge has insufficient information to admit or deny the allegations of paragraph 50 of the Counterclaims and thus denies the same.

51. PetEdge denies the allegations of paragraph 51 of the Counterclaims.

52. PetEdge denies the allegations of paragraph 52 of the Counterclaims.

53. PetEdge denies the allegations of paragraph 53 of the Counterclaims.

54. PetEdge denies the allegations of paragraph 54 of the Counterclaims.

SIXTH CLAIM FOR RELIEF

55. PetEdge hereby restates and incorporates paragraphs 1-7 and 9 of the Answer to the Defendant’s Counterclaims as if set forth fully herein.

56. PetEdge has insufficient information to admit or deny the allegations of paragraph 56 of the Counterclaims and thus denies the same.

57. PetEdge denies the allegations of paragraph 57 of the Counterclaims.

58. PetEdge has insufficient information to admit or deny the allegations of paragraph 58 of the Counterclaims and thus denies the same.

59. PetEdge denies the allegations of paragraph 59 of the Counterclaims.

60. PetEdge denies the allegations of paragraph 60 of the Counterclaims.

61. PetEdge denies that its conduct requires authorization by Kyjen.

62. PetEdge denies the allegations of paragraph 62 of the Counterclaims.

63. PetEdge denies the allegations of paragraph 63 of the Counterclaims.

64. PetEdge denies the allegations of paragraph 64 of the Counterclaims.

65. PetEdge denies the allegations of paragraph 65 of the Counterclaims.

SEVENTH CLAIM FOR RELIEF

66. PetEdge hereby restates and incorporates paragraphs 1-7 and 9 of the Answer to the Defendant's Counterclaims as if set forth fully herein.

67. PetEdge has insufficient information to admit or deny the allegations of paragraph 67 of the Counterclaims and thus denies the same.

68. PetEdge denies the allegations of paragraph 68 of the Counterclaims.

69. PetEdge has insufficient information to admit or deny the allegations of paragraph 69 of the Counterclaims and thus denies the same.

70. PetEdge admits that it sells a collection of toys under the name "Zanies Feels-Like-Tennis Toys". PetEdge denies the remaining allegations of paragraph 70 of the Counterclaims.

71. PetEdge denies the allegations of paragraph 71 of the Counterclaims.

72. PetEdge denies that its conduct requires authorization by Kyjen.

73. PetEdge denies the allegations of paragraph 73 of the Counterclaims.

74. PetEdge denies the allegations of paragraph 74 of the Counterclaims.

75. PetEdge denies the allegations of paragraph 75 of the Counterclaims.

76. PetEdge denies the allegations of paragraph 76 of the Counterclaims.

EIGHTH CLAIM FOR RELIEF

77. PetEdge hereby restates and incorporates paragraphs 1-7 and 9 of the Answer to the Defendant's Counterclaims as if set forth fully herein.

78. PetEdge has insufficient information to admit or deny the allegations of paragraph 78 of the Counterclaims and thus denies the same.

79. PetEdge denies the allegations of paragraph 79 of the Counterclaims.

80. PetEdge has insufficient information to admit or deny the allegations of paragraph 80 of the Counterclaims and thus denies the same.

81. PetEdge sells a collection of toys under the name "Zanies Floating Toys". PetEdge denies the remaining allegations of paragraph 81 of the Counterclaims.

82. PetEdge denies the allegations of paragraph 82 of the Counterclaims.

83. PetEdge denies that its conduct requires authorization by Kyjen.

84. PetEdge denies the allegations of paragraph 84 of the Counterclaims.

85. PetEdge denies the allegations of paragraph 85 of the Counterclaims.

86. PetEdge denies the allegations of paragraph 86 of the Counterclaims.

87. PetEdge denies the allegations of paragraph 87 of the Counterclaims.

NINTH CLAIM FOR RELIEF

88. PetEdge hereby restates and incorporates paragraphs 1-7 and 9 of the Answer to the Defendant's Counterclaims as if set forth fully herein.

89. PetEdge has insufficient information to admit or deny the allegations of paragraph 89 of the Counterclaims and thus denies the same.

90. PetEdge denies the allegations of paragraph 90 of the Counterclaims.

91. PetEdge has insufficient information to admit or deny the allegations of paragraph 91 of the Counterclaims and thus denies the same.

92. PetEdge sells a pet food bowl under the name “Guardian Gear Fold-N-Go”. PetEdge denies the remaining allegations of paragraph 92 of the Counterclaims.

93. PetEdge denies the allegations of paragraph 93 of the Counterclaims.

94. PetEdge denies that its conduct requires authorization by Kyjen.

95. PetEdge denies the allegations of paragraph 95 of the Counterclaims.

96. PetEdge denies the allegations of paragraph 96 of the Counterclaims.

97. PetEdge denies the allegations of paragraph 97 of the Counterclaims.

98. PetEdge denies the allegations of paragraph 98 of the Counterclaims.

TENTH CLAIM FOR RELIEF

99. PetEdge hereby restates and incorporates paragraphs 1-7 and 9 of the Answer to the Defendant’s Counterclaims as if set forth fully herein.

100. PetEdge has insufficient information to admit or deny the allegations of paragraph 100 of the Counterclaims and thus denies the same.

101. PetEdge denies the allegations of paragraph 101 of the Counterclaims.

102. PetEdge has insufficient information to admit or deny the allegations of paragraph 102 of the Counterclaims and thus denies the same.

103. PetEdge sells a pet food bowl under the name “Guardian Gear Portable Travel Bowl”. PetEdge denies the remaining allegations of paragraph 103 of the Counterclaims.

104. PetEdge denies the allegations of paragraph 104 of the Counterclaims.

- 105. PetEdge denies that its conduct requires authorization by Kyjen.
- 106. PetEdge denies the allegations of paragraph 106 of the Counterclaims.
- 107. PetEdge denies the allegations of paragraph 107 of the Counterclaims.
- 108. PetEdge denies the allegations of paragraph 108 of the Counterclaims.
- 109. PetEdge denies the allegations of paragraph 109 of the Counterclaims.

ELEVENTH CLAIM FOR RELIEF

110. PetEdge hereby restates and incorporates paragraphs 1-109 of the Answer to the Defendant's Counterclaims as if set forth fully herein.

- 111. PetEdge denies the allegations of paragraph 111 of the Counterclaims.
- 112. PetEdge denies the allegations of paragraph 112 of the Counterclaims.
- 113. PetEdge denies the allegations of paragraph 113 of the Counterclaims.

AFFIRMATIVE DEFENSES

- 1. PetEdge hereby restates and incorporates paragraphs 12-21, 23, 25, 27 and 29 of PetEdge's Complaint for Declaratory Judgment as if set forth fully herein.
- 2. Upon information and belief, the actions of PetEdge were justified.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff PetEdge respectfully prays for relief as follows:

A. that Kyjen take nothing on its Counterclaims, and that the Counterclaims be dismissed with prejudice.

B. that Kyjen's federal copyright registration Nos. VA 999-576, VA 1-015-297, VA 1-248-235 and VA 1-248-236 be held invalid and/or non-infringed by PetEdge.

C. that Kyjen's alleged "Bungee" and "Bungees" trademarks be held descriptive, invalid and non-infringed by PetEdge.

D. that PetEdge be held not to have infringed Kyjen's alleged trade dress in its Tug 'N Ring toys, its Tennis Toys, its H₂O toys, its Dispose-a-Bowl bowls, and its Port-a-Bowl bowls.

E. that PetEdge be held not to have engaged in unfair competition.

F. that no injunctions be granted against PetEdge or its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with PetEdge.

G. that the Court award Kyjen nothing in damages, profits, fees and costs.

H. that the Court Grant PetEdge such other and further relief as this Court may deem just and proper including awarding PetEdge the costs and attorney's fees associated with this Answer to the Defendant's Counterclaims.

THE PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY

Respectfully submitted,
By: the Attorneys for PetEdge, Inc.

DATE: 8/10/04


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following by first class mail on August 10, 2004:

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